

BEFORE THE SOUTH CAROLINA PUBLIC SERVICE COMMISSION

DOCKET NO. 91-216-E

OCT 5 1 1991

SECTION

IN THE MATTER OF:)

)
Application of Duke Power Company)
for Authority to adjust and increase)
it's electric rates and charges.)

Jasper P. Rogers
Proposed findings

POSTED
10/30/91

Jasper P. Rogers
Intervenor

Jasper P. Rogers

Rt. 1, Box 346
Ridgeway, S. C. 29130

October 25, 1991

S.C. PUBLIC SERVICE COMMISSION
RECEIVED
OCT 30 1991

First and Foremost, I would like to congratulate the Chairman and Commissioners on the professional manner in which this Hearing was conducted. All of you and your staff did a splendid job.

When the Prehearing Conference was being conducted, I mentioned that I would be discussing the water levels on Lake Wateree and the deplorable flooding conditions that homeowners have endured over the past fifteen years. I also stated that I felt that Duke Power's feelings are that they have no obligation to correct this condition because of easements, reservations, conditions and restrictions contained in their deeds to the property owners.

When the formal Hearing started on September 23, 1991, Mr. Lee confirmed my feelings that were expressed in the Prehearing Conference, in his response to my question (Vol. 1, page 76, Line 20) in his answer to that question (Vol. 1, page 77, Line 17).

In responding to Issue 18, brought before the Commission, Duke's representative made no promises or guarantees to the maintenance of any particular water level at any time or season on Lake Wateree.

In responding to my questions pertaining to Issue 19, Mr. Lee acknowledged that there was flood problems on Lake Wateree, but that Duke has no obligation to correct that situation. He also indicated that to his knowledge, there are no current or future plans to correct the flooding problems on Lake Wateree.

In responding to my questions pertaining to Issue No. 20, in which a 10-foot standing easement was acknowledged by Mr. Lee as being recorded in the deeds to property owners of Lake Wateree (Vol. 1, page 78). I am attaching my family deed to these findings, for review by the Commission. The deed attached is the most one sided I have ever seen, all for the seller and basically nothing for the purchaser. The deed referred to above does not even promise us the continued existence of Lake Wateree.

Obtained from the Records in
Fairfield County Court House

	<u>Acres</u>	<u>Price</u>	<u>Year Purchased</u>
AW 331	56A	\$5.00	9-15-10
BB 359	125A	\$1,708.00	4-14-09
AZ 517	431 1/8 A	\$10,000.00	8-4-09
BC 229	55½ A	\$ 600.00	1-5-11
BB 523	60 A	5.00 & Other Valuable Consid.	12-16-09
AW 196	54 A + 2,000 A	\$25,000.00	12-19-10
BB 433	212½ A	\$ 1,300.00	12-20-09
BB 361	430 A	\$11,180.00	4-14-09
BD 193	52 A	\$ 1,100.00	3-10-13
BC 147	147 A	\$ 1,249.50	12-19-10
AZ 520	353 A	\$ 7,060.00	8-4-09
BE 577	1/15 Int. in 116 A	\$ 316.67	12-6-22
CP 158	66A	Consideration of a Conveyance by Duke Power	4-4-56
CU 418	36 A	\$ 1,260.00	1-24-59

Obtained from the Records in
Fairfield County Court House

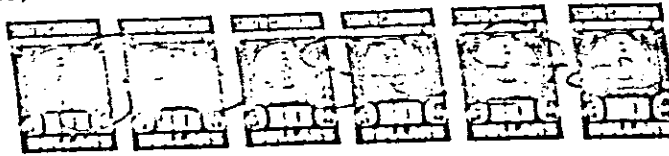
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AZ 517	431 1/8 A	\$10,000.00	8-4-09
BC 229	55 1/2 A	\$ 600.00	1-5-11
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MAIL TO: Sammy W. Cross
Crescent Land & Timber Corp.
P. O. Box 30817
Charlotte, N. C. 28230

\$38.50 County
Tax PAID

W.H.K.
D.P.M.
4/9/79

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD



THIS DEED, Made this 8th day of May, 1979

from DUKE POWER COMPANY, a corporation organized under the laws of the
State of North Carolina, hereinafter called "Grantor," to CRESCENT LAND
AND TIMBER CORP., a corporation organized under the laws of the State of
South Carolina, hereinafter called "Grantee;"

WITNESSETH:

That the said Grantor, in consideration of the sum of One Hundred
(\$100.00) Dollars and other good and valuable considerations to it paid,
the receipt of which is hereby acknowledged, has bargained and sold and
by these presents does grant, bargain, sell and convey unto the said
Crescent Land and Timber Corp., its successors and assigns, all of those
certain tracts of land situate, lying and being in Fairfield
County, State of South Carolina, subject to certain rights, easements
and privileges herein reserved, said land being more particularly
described as follows:

BEING all land having a surface elevation above 226.5 feet above
mean sea level, U.S.G.S. datum, described in the following deeds:

Duke Power Co. Parcel No.	Name of Grantor	Date of Deed	Recorded in Book	Page
WA-9	Julia L. Belton, et al.	9-15-10	AW	331
WA-13	Mrs. A. M. W. Cassels	4-14-09	BB	359
WA-15	P. B. Cornwell	8-4-09	AZ	517
WA-17	Callie Cunningham, et al.	1-5-11	BC	229
WA-18	Emma Cunningham	12-16-09	BB	523
WA-29	J. D. Harrison	12-29-10	AW	196
WA-30	J. D. Harrison	10-20-09	BB	433
WA-52	J. I. Kaylor	4-14-09	BB	361
WA-60	Adam W. Mickle	3-10-13	BD	193
WA-61	Preston Mickle, Jr.	12-19-10	BC	147
WA-69	J. W. Poovey	8-4-09	AZ	520
WA-130(C)	J. D. Harrison	12-6-22	BE	577
WA-157	Mary Harrison, et al.	4-4-56	CP	158
WA-163	Jason C. Whitaker	1-24-59	CU	418

The lands herein conveyed lying in School District No. 5, south of Lake Wateree along Highway S-20-101 and on both sides of June Creek. The portion east of June Creek containing 2,136.67 acres, more or less; the portion west of June Creek containing 303.26 acres, more or less.

The Grantor, Duke Power Company, reserves from this conveyance the following rights, privileges and easements:

The right, privilege and easement of backing, ponding, raising, flooding or diverting the waters of the Catawba River and its tributaries in, over, upon, through or away from said land up to the contour at elevation 236.5 feet above mean sea level, U.S.G.S. datum, in connection with, as a part of, or incident to the operation, maintenance, repair, altering, construction or replacing of a dam and electric power plant on the Catawba River; together with the right at any time and from time to time to clear a portion of said land up to 236.5 feet above mean sea level, U.S.G.S. datum, of trees, underbrush, and other growth and to drain and otherwise use said portion of said land in any manner and to any extent up to 236.5 feet above mean sea level, U.S.G.S. datum, which the Power Company finds necessary or desirable in connection with the maintenance, operation, construction or reconstruction of the said dam and power plant and the reservoir or lake created by same; and for the purpose of exercising the rights herein reserved, the Power Company reserves the right of ingress and egress over the land hereinabove described, such right to be over such roads as are now or as hereafter may be on said land, and in case there is no road on the land which is suitable for ingress and egress by the Power Company, the Power Company will have ingress and egress over the lands herein conveyed to the edge of the water for the purpose of exercising the rights herein reserved.

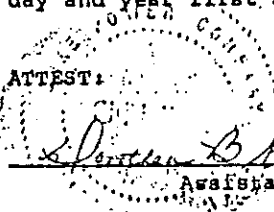
The rights, privileges and easements herein reserved and hereinbefore referred to shall be binding upon and shall inure to the Grantor, its successors and assigns, provided that the failure of the Power Company, its successors or assigns, to exercise any of the rights herein reserved shall not be construed as a waiver or abandonment of the rights thereafter at any time and from time to time to exercise any or all of same.

TO HAVE AND TO HOLD, the aforesaid certain tracts of land and all privileges and appurtenances thereto belonging, except for the reservations, privileges and easements reserved, to the said Crescent Land and Timber Corp., its successors and assigns, to their only use and behoof forever.

And the said Grantor, for itself, its successors and assigns, covenants with the said Grantee, its successors and assigns, that it is seized of said premises in fee and has right to convey the same in fee simple; that the same is free and clear from all encumbrances, and that it will warrant and defend the said title to the same against the lawful claims of all persons whomsoever, except for the rights, privileges, easements and reservations above described.

IN TESTIMONY WHEREOF, the Grantor to these presents has caused this instrument to be executed by its duly authorized officials, this the day and year first above written.

ATTEST:


Elizabeth B. Hester
 Assistant Secretary

DUKE POWER COMPANY

By *F. A. Jenkins*
 Vice President

Signed, Sealed and Delivered
 in the Presence of:

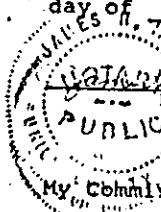
Elizabeth B. Hester
James B. Hester

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STATE OF NORTH CAROLINA)
COUNTY OF UNION)

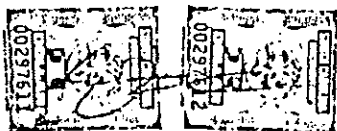
PERSONALLY appeared before me Elizabeth H. Johns,
and made oath that she saw the within named DUKE POWER COMPANY by
F. A. Jenkins, Vice President, and
Dorothea B. Stroupe, Asst. Secretary, sign, seal, and as its
act and deed deliver the within written instrument, and that she with
James R. Moore witnessed the execution thereof.

SWORN to before me this 8th
day of May, 1979.

 Elizabeth H. Johns
Notary Public
My Commission Expires September 4, 1982.

Elizabeth H. Johns

RECORDED: May 9, 1979, at 2:45 P.M. E.F. Connor E.F. CONNOR, C.C.C.



STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

FEB 21 9 40 AM '80

CLERK OF COURT
E. F. CONNOR
FAIRFIELD COUNTY, S. C.

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THIS DEED, made this 29th day of January, 1980,

from CRESCENT LAND & TIMBER CORP., a corporation organized under the laws of the State of South Carolina, hereinafter called "Grantor", to

JASPER P. ROGERS and LILLIAN N. ROGERS
hereinafter called "Grantee" (whether one or more, individual or corporation);

*\$7.70
County 2nd
Paid*

WITNESSETH:

That the said Grantor in consideration of the sum of Six thousand seven hundred and no/100 (\$6,700.00) Dollars to it paid, the receipt of which is hereby acknowledged, has bargained and sold and by these presents does grant, bargain, sell and convey unto the said Grantee, all of that certain tract of land situate, lying and being in Fairfield County, State of South Carolina, said land being more particularly described as follows:

BEING Lot 88 in Section 11, as shown on map recorded in Map Book FN at page 309 in the office of the Clerk of Court for Fairfield County AND BEING a part of the property conveyed to Crescent Land & Timber Corp. by deed of Duke Power Company recorded in Book FM at page 45 in the office of the Clerk of Court for said County.

This conveyance is made subject to the following easements, reservations, conditions and restrictions:

1. That said lot shall be used only for single family recreation and/or single family residence purposes;
2. That not more than one private single family residential dwelling, together with accessory buildings and facilities normally incident to a private single family residential home site shall be constructed upon the said lot;
3. Said lot shall not be used for business, commercial, industrial, condominium, apartment or other multi-family residential uses;
4. Subdivision of the land conveyed by this deed into two or more lots is expressly prohibited except where:
 - A. Every lot resulting from such subdivision shall contain at least 30,000 square feet in area; and
 - B. Every lot resulting from such subdivision, if any part of any boundary line of that lot is within one hundred fifty (150') feet distance from one of the Catawba River lakes, shall have a lake or water front width of seventy-five (75') feet or more. The lake or water front width shall be measured on a straight line between the two points at which the side lines of said lot intersect with Duke Power Company's lake property;
5. No part of any building shall be constructed nearer than ten (10') feet from any lot line or nearer than fifty (50') feet from the contour shown on the aforesaid map; provided, however, existing buildings located on the land conveyed hereby may remain where they are;
6. No trucks, trailers or other vehicles (other than permanently installed mobile homes) shall be placed upon said lot and used as a building;
7. No refuse, garbage, rubbish or waste of any kind shall be placed upon other lands, roadways, or waters adjoining said lot nor shall any refuse, garbage, rubbish or waste of any kind be placed upon or allowed to remain upon said lot;

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8. No illegal, offensive or obnoxious use shall be made of said lot nor shall a nuisance be maintained thereon;

9. Grantee will construct and maintain in accordance with the requirements of local Health Departments and the State Board of Health, either an outside toilet or an inside sewage system and septic tank or an inside sewage system connected to a utility system meeting the aforesaid governmental requirements;

10. Grantee will not permit any use of the premises and buildings thereon by the general public for compensation or otherwise, provided that this provision shall not preclude normal visiting by and entertainment of Grantee's nonpaying guests, and provided further, that this provision shall not preclude Grantee's leasing his single family residential building to a third party for use in compliance with the restrictions herein contained;

11. Any water system used to supply said lot shall comply with the regulations of local Health Departments and the State Board of Health;

12. Grantor reserves unto Duke Power Company, its successors and assigns, an easement or easements ten feet (10') in width over any portion(s) of the lot herein conveyed adjoining any road right of way shown on the recorded map. Said easement shall be on either side or both sides of any road right of way shown on the recorded map and may be used for the purpose of the installation, maintenance and operation of utilities, including electric, telephone, radio and television transmission cables, and other service facilities, together with the accessory right to locate guy wires, braces or anchors, and to cut, trim or remove trees and plantings wherever necessary upon said lot in connection with such installation, maintenance and operation;

13. Grantor reserves unto Duke Power Company, its successors and assigns, an easement for the maintenance and operation of any existing electric distribution lines that may be located upon said lot, together with the right to cut, trim or remove any trees and plantings wherever necessary in connection with such maintenance and operation;

14. Grantor reserves for itself, its successors and assigns, an easement over a ten-foot wide strip running along the inside of all side lot lines of said lot together with the right to, but not the obligation to, construct and maintain drainage ditches, slopes or storm sewers. In the event that Grantee has now a presently existing structure on said strip, then the strip shall detour around said structure (keeping within the aforesaid lot lines and having a ten-foot (10') width from the edge of the structure) and except for said detour, run along said side lot lines with said ten-foot width;

15. Grantor reserves unto Duke Power Company, its successors and assigns, the right to deposit by air upon the land herein conveyed any emissions arising from or associated with the operation of the electric power plant or plants now constructed or to be constructed on the Catawba River or its tributaries by the said Company;

16. No owner of said lot shall have any claim or cause of action against Grantor, its affiliates or its licensees arising out of the exercise or non-exercise of any easement or other right reserved hereunder or referred to herein except in cases of willful or wanton misconduct;

17. No delay or failure on the part of an aggrieved party to invoke an available remedy in respect to a violation of any provision contained herein or referred to herein shall be held to be a waiver by that party of any right available to him upon the recurrence or continuance of said violation or the occurrence of a different violation;

18. In the event Duke Power Company, its successors or assigns, hereinafter acquires title to the property conveyed hereby, none of the restrictions, easements, conditions, or reservations herein contained shall preclude or be construed to preclude said Company from using said property for any of the following purposes: (1) electric generating plant(s) including ancillary facilities for construction and operation of the electric generating plant(s); (2) electric substation(s) and transmission lines, together with necessary rights of way for the construction of said substation(s) and lines and ingress and egress thereto; (3) "Exclusion Area(s)" as now or hereinafter defined in 10 CFR § 100.3, as amended; (4) sewer line(s); and (5) water supply line(s); and

19. Every restriction, easement, condition and reservation set out herein or referred to herein is hereby declared to be independent of and severable from each other, and if any of same shall be held by a court of competent jurisdiction to be invalid or unenforceable all the remainder of said easements, conditions, reservations and restrictions shall continue unimpaired and in full force and effect.

20. If an existing access road crosses the lot herein conveyed, the right of ingress and egress over said road is reserved for the purchasers of recreational lots served by said road, their heirs, successors and assigns, and for Grantor, its successors and assigns.

Grantee shall have the nonexclusive right of ingress and egress over the access road(s) shown on the recorded map. However, Grantor, its successors and assigns, reserves the right to relocate at any time, with or without the consent of Grantee, any access road(s) or portion(s) thereof, provided:

(a) Construction of the relocated portion(s) of said access road(s) shall be completed prior to the closing of the discontinued portion(s).

(b) Grantor shall record a plat of survey showing the portion(s) of any road(s) to be relocated and the relocation of the road(s) and right of way for said road(s) as relocated.

(c) In the exercise of its right to relocate access roads, Grantor may, if it shall deem desirable, increase the road distance between the lot herein conveyed and the nearest public road.

(d) The provisions of this paragraph shall not apply to roads which have been formally dedicated and accepted as publicly maintained roads; recording of the plat of survey for the lot herein conveyed shall not be construed as an offer of public dedication of the roads shown thereon.

21. By accepting this deed, Grantee signifies his understanding that Grantor will not hereafter construct, maintain or improve any access road other than those access roads relocated as provided in paragraph 20 above. Grantor grants to Grantee the right to maintain and repair at Grantee's expense the access roads to the lot herein conveyed provided that such maintenance and repair shall not unreasonably interfere with the use thereof by Grantor or other lot purchasers.

As part of the consideration for this conveyance, Grantee does hereby give and grant unto the Grantor, its successors and assigns, the right, privilege and option to purchase for the sum of Ten (\$10.00) Dollars any right(s) of way for ingress and egress which may be acquired by Grantee, whether by operation of law or otherwise, over any lands of Grantor and any lands formerly of Grantor heretofore conveyed to others, except those rights of way for access shown upon the recorded maps of Grantor for the section and lot herein conveyed. This option shall remain in effect for a period of time equal to the period established in the Option to Purchase given by Grantee to Duke Power Company by instrument of even date herewith to be recorded. This option shall run with the land and shall be binding upon the Grantee, Grantee's heirs, successors and assigns.

As part of the consideration for this conveyance, Grantee hereby releases and forever quits claims unto Grantor all Grantee's right, title and interest in and to any adjoining or nearby lands, the record title to which is in Grantor, except such interest in said adjoining or nearby lands as Grantee holds pursuant to a written instrument between Grantor and Grantee which instrument is still valid after the recording of this deed. By delivering and accepting this deed Grantor and Grantee acknowledge and agree that the Lease between them dated prior to the recording of this deed and including all or part of the land hereby conveyed is hereby terminated.

By accepting this deed Grantee signifies his understanding that Grantor specifically makes no promises, covenants, warranties or guarantees relative to:

1. The continued existence of any lake;
2. The purity or any other characteristic of the water in any lake;
3. The maintenance of any particular water level at any time or season in any lake;
4. Any right to use for any purpose or any right to access to the water of any lake; and
5. Any right to construct piers, docks, boathouses, or any other improvements of any sort except upon the land conveyed hereby in keeping with the aforesaid restrictions, easements, conditions and reservations.

By accepting this deed Grantee signifies his understanding that Duke Power Company has certain privileges and easements affecting the property hereby conveyed which include the right, privilege and easement of backing, ponding, raising, flooding or diverting the waters of the Catawba River and its tributaries upon and over said property, as more specifically described in the deed from Duke Power Company to the Grantor recorded in the office of the Clerk of Court in the aforesaid County.

Grantee further acknowledges he has been informed that the lot hereby conveyed lies within an area identified by Duke Power Company as the site of a future electric generating plant. Grantee is aware that under that separate option agreement granted herewith, Duke Power Company shall have the right but shall be under no obligation to purchase the lot hereby conveyed.

TOGETHER with all and singular the rights, members hereditaments, and appurtenances to the said premises belonging, or in any wise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned, unto the said Grantee, Grantee's heirs, successors and assigns forever, except that this conveyance is made subject to the easements, reservations, conditions and restrictions set out above and to all other conditions, easements, reservations and restrictions of record.

And the said Grantor for itself and its successors and assigns covenants with the said Grantee and Grantee's heirs, successors and assigns, that it is seized of said premises in fee and has right to convey the same in fee simple; that the same is free and clear from all encumbrances and that it will warrant and defend said title to the same against the lawful claims of all persons whomsoever, except that this conveyance is made subject to the reservations, easements, conditions and restrictions set out above or of record and to the taxes for the current year which Grantee hereby assumes and agrees to pay.

IN WITNESS WHEREOF, the said Grantor has caused this instrument to be executed by its duly authorized officials this the day and year first above written.

Signed, Sealed and Delivered
In the Presence of:

Esther Williams

Peggy H. Cain

CRESCENT LAND & TIMBER CORP.

By

Miles P. Brown
Vice President

Attest:

W. J. [illegible]
Secretary